IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 37515 of 2007(N)

OS.9/2007 of MUNSIFF COURT, IDUKKI

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PETITIONER:

K.I. PAULOSE, AGED 45 YEARS,
S/O. K.P. IPE, KAVIKKUNNEL HOUSE, KUNNAKKAL P.O.,
MUVATTUPUZHA.

BY ADV. SRI.N.M.MOHAMMED AYUB
SRI.JOHNSON JOSEPH

RESPONDENT:

RAVEENDRAN, AGED 52 YEARS,
S/O. SREEDHARAN, CHARUVILA PUTHEN VEETTIL,
ALPARA KARA, KANJIKUZHY VILLAGE, THODUPUZHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C). NO. 37515 OF 2007

Dated this the 18th day of December, 2007

J U D G M E N T

This writ petition is preferred against the order of the Munsiff, Irrinjalkkuda in O.S. 9/07. The suit is one for realisation of damages for unauthorisedly filling the plaint scheduled property with earth and stones. It is also seen from the order of the court that the matter has been heard and it is at the time of final hearing, the court found that the 5th prayer in the commission application has not been answered by the Commission. The court thereafter found that the volume of earth and stone dumped in the plaint scheduled property is deemed requisite for the just determination of the case and therefore remitted back the commissioner's report to file a supplementary report. Learned counsel for the petitioner submits that it is not a subject that has been claimed in the suit and therefore remission is unwarranted. The court has taken evidence and felt that these materials are necessary for a proper disposal of the case.

2. I do not want to interfere with the said discretion exercising the power under Article 227 of the Constitution of India and therefore

the writ petition is dismissed. But I make it clear that if there are such contentions for the writ petitioner that it is not pleaded and it cannot be taken into account, after the filing of the report, the petitioner must be given an opportunity to file objections to the Commissioner's report and raise his contentions and thereafter only the court can dispose of the matter in accordance with law.

M.N.KRISHNAN, JUDGE

vps